

MEMORANDUM OF AGREEMENT ADDENDUM 1
Between
Insert Name of State
And
The United States Environmental Protection Agency Region Insert
Region Number

I. General

The Memorandum of Agreement between the state of **Insert Name of State** and the EPA Region **Insert Region Number**, dated **Insert date of Underground Injection Control (UIC) Program Memorandum of Agreement** (program MOA), is supplemented by this Addendum 1. All terms defined in the program MOA shall have the same meanings for purposes of this Addendum 1.

This Agreement is entered into by **Insert Name of State** and signed by **Insert Name of State Signer** of **Insert Name of State Agency** (*e.g. Department of Environmental Protection*), (hereafter, “the state” or “the Department”) with the United States Environmental Protection Agency, Region **Insert Region Number**, and signed by **Insert Name of Regional Administrator**, Regional Administrator (hereafter, “EPA” or “Regional Administrator”). This Agreement shall become effective when approved by the Regional Administrator.

A. Lead Agency Responsibilities

The **Insert Name of State Agency** is the lead agency to coordinate the implementation of the Class VI UIC program. This lead agency shall coordinate the state program to facilitate communication between the EPA and any other state agencies having program responsibilities for other injection well classes. These responsibilities shall include, but not be limited to, the submission of grant applications, reporting and monitoring results, and annual report requirements. The **Insert Name of State Agency** is responsible for and has statewide jurisdiction over all Class IV injection wells.

B. Review and Modifications

This Agreement may be modified upon the initiative of the state or the EPA. Modifications must be in writing and must be signed by the **Insert Name of State Agency** and the Regional Administrator. Modifications become effective when signed by both parties. Modifications may be made by revision prior to the effective date of this Agreement or subsequently by addenda attached to this Agreement and consecutively numbered, signed, and dated.

C. Conformance with Laws and Regulations

The **Insert Name of State** shall administer the Class VI UIC program consistent with the state’s submission for program approval, the program MOA, this Addendum, the Safe Drinking Water Act (SDWA), current federal policies and regulations, promulgated minimum requirements, priorities established as part of the annually approved state UIC grant, state and federal law, and any separate working agreements which shall be entered into with the Regional Administrator as necessary for the full administration of the Class VI UIC program.

D. Responsibilities of Parties

Each of the parties has responsibilities to assure that the Class VI UIC requirements are met. The parties agree to maintain a high level of cooperation and coordination between state and EPA staffs in a partnership to assure successful and effective administration of the Class VI UIC program. In this partnership, the Regional Administrator will provide to the **Insert Name of State Agency** necessary technical and policy assistance on program matters.

The Regional Administrator is responsible for keeping the **Insert Name of State Agency** apprised, in a timely manner, of the meaning and content of the federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the UIC program.

The strategies and priorities for issuance, compliance, monitoring and enforcement of permits, and implementation of technical requirements shall be established in the state's program description, the annual SEA, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the state and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the Class VI UIC program.

E. Sharing of Information

The **Insert Name of State Agency** shall promptly inform EPA of any proposed, pending, or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions, which might affect the state program and the state's authority to administer the program. The **Insert Name of State Agency** shall promptly inform EPA of any resource allocation changes (for example, personnel budget, equipment, etc.) which might affect the state's ability to administer the program.

Any information obtained or used by the state under its Class VI UIC program shall be available to EPA upon request without restriction. If the information has been submitted to the state under a claim of confidentiality, the state must submit that claim to EPA when providing EPA such information. Any information obtained from a state and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 2. If EPA obtains information from the state that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish the state the information in its files not submitted under a claim of confidentiality which the states needs to implement its approved program. EPA shall furnish to states information submitted to EPA under a claim of confidentiality which the state needs to implement its approved program subject to conditions in 40 CFR Part 2.

F. Duty to Revise Program

As stated in 40 CFR 145.32(e), within 270 days of any amendment to any regulation promulgated at 40 CFR 124, 144, 145 or 146 revising or adding any requirement respecting state UIC programs, the state shall submit notice to EPA showing that the state program meets the revised or added requirements.

G. Duration of MOA

This Agreement will remain in effect until such time as state primacy enforcement responsibility is returned to EPA by the state, or withdrawn by EPA, according to the provisions of 40 CFR Part 145.31.

H. General Provisions

Nothing in this Agreement is intended to affect any Class VI UIC or program requirement, including any standards or prohibitions established by state or local law, as long as the state or local requirements are no

less stringent than or are deemed equally protective as: (1) any set forth in the Class VI UIC regulations; or (2) other requirements or prohibitions established under SDWA or applicable regulations.

Nothing in this Agreement shall be construed to limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1424, 1425, 1426, 1431 or other sections of SDWA.

II. Permitting

A. General

The State is responsible for expeditiously drafting, circulating, issuing, reissuing, and terminating Class VI permits and shall do so in accordance with 40 CFR Part 124.3. The Director shall review and issue permits based on the permit conditions of 40 CFR Parts 40 CFR 144-146, and 40 CFR 148. Class VI permits shall be modified pursuant to 40 CFR 144.39 (permit modifications) and 40 CFR 144.41 (minor modifications). Permits shall be issued which comply with applicable Federal and State requirements.

All Class VI permits shall meet the public participation requirements at 40 CFR 25 and 124, interstate coordination requirements at 40 CFR 146.82(b), and permitting procedures at 40 CFR 124 for Class VI wells.

B. Class VI Injection Depth Waivers

The State shall provide all information received through the injection depth waiver application process described in 40 CFR 146.95, to the Regional Administrator. Based on the information provided, the Regional Administrator shall provide written concurrence or non-concurrence regarding waiver issuance. The State shall not issue a Class VI injection depth waiver without receipt of written concurrence from the Regional Administrator.

C. Post-injection Site Care and Site Closure

The State and EPA agree to consult on any alternative post-injection site care timeframes (other than the 50 year default timeframe required by 40 CFR 146.93), if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs.

D. Transfer of Responsibility from EPA

The Regional Administrator shall transfer to the State any permits, applications, and any other information relevant to Class VI UIC program operation not already in the possession of the state Director when a State assumes primacy for the Class VI program.

[NOTE ---If a State lacks the authority to directly administer permits issued by the Federal government, a procedure should be established to transfer responsibility for these permits. For example, EPA and the State could agree that the State would issue a Class VI permit(s) and the Federal permit would be simultaneously terminated.]

E. Coordination with EPA (Discretionary)

EPA and the State may coordinate when appropriate the processing of permits for facilities or activities that require permits from both EPA and the State under different programs.

[NOTE ---To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to coordinate or consolidate their own permit programs and activities.]

F. Consolidation of Permit Issuance (Discretionary)

The State and EPA may agree on provisions for joint processing of permits for facilities or activities which require permits from both EPA and the State under different programs. The State and EPA may consolidate draft permits, fact sheets, public comment periods, and any public hearings on those permits which are jointly processed. The Director shall not, however, proceed with joint processing of permits if this would result in unreasonable delay in the issuance of one or more permits.

G. Compliance Schedule and Reports

The Director agrees to establish compliance schedules in permits where appropriate and to require periodic reporting on compliance with compliance schedules and other permit conditions.

H. Environmental Justice

The UIC Program Director agrees to examine the potential risks of a proposed Class VI well within his or her jurisdiction to identify and address any particular impacts on minority and low-income populations.

III. Compliance Monitoring

A. General

The state shall operate a timely and effective compliance monitoring system to track compliance with program requirements. For purposes of this Agreement, the terms “compliance monitoring” or “compliance evaluation” shall refer to all efforts associated with determining compliance with Class VI UIC program requirements.

B. Compliance Schedule

The state agrees to maintain procedures to receive, evaluate, retain, and investigate all notices and reports that are required by program regulations. These procedures shall also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The state shall initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

C. Review of Compliance Reports

The state shall conduct a timely and substantive review of all such reports to determine compliance status. The state shall operate a tracking system to determine if: (1) the reports required by program regulations are submitted; (2) the submitted reports are complete and accurate; and (3) the program requirements are met. The reports and notices shall be evaluated for compliance status in accordance with the state compliance program and the program requirements.

D. Inspection and Surveillance

The **Insert Name of State Agency** agrees to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the Class VI program. Survey or other methods of surveillance shall be utilized to identify persons who have not complied with program

requirements. Any compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The **Insert Name of State Agency** shall conduct inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections shall be conducted to determine compliance or noncompliance, verify the accuracy of information submitted in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information.

E. Authority to Enter

The **Insert Name of State Agency** (and other state designees) engaged in compliance monitoring and evaluation shall have the authority to enter any site or premises subject to regulation or to review and copy the records of relevant program operations where such records are kept.

F. Admissibility

Any investigatory inspections shall be conducted and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

IV. Enforcement

A. General

The state is responsible for taking timely and appropriate enforcement action against persons in violation of Class VI program requirements, compliance schedules, technical and other Class VI program requirements. This includes violations detected by state or federal inspections.

Failure by the state to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the state has failed to take timely enforcement action.

B. Enforcement Mechanisms

The state shall have the mechanism to restrain immediately and effectively any person engaging in any unauthorized activity or operation, which is endangering or causing damage to public health or the environment as applicable to the program requirements. The state agency administering the Class VI program shall also have the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. Additionally, the state agency administering the Class VI program shall have the mechanism to access or sue to recover in court civil penalties and criminal remedies as established in 40 CFR 145.13.

C. EPA Enforcement

Nothing in this Agreement shall affect EPA's authority or responsibility to take enforcement actions under Sections 1423 and 1431 of SDWA.

When the states has a fully approved Class VI program, the EPA will not take enforcement actions without providing prior notice to the state and otherwise complying with sections 1423 and 1431 of SDWA.

D. Assessment of Fines

The state shall agree to assess civil penalties in amounts appropriate to the violation as required in Section 145.13(c) of the regulations.

V. EPA Oversight

A. General

EPA shall oversee the state's administration of the Class VI program on a continuing basis to assure that such administration is consistent with this Agreement, the program MOA, the state UIC grant application, and all applicable requirements embodied in current regulations, policies, and federal law.

In addition to the specific oversight activities listed in this section, EPA may from time to time request specific information, and the state shall submit and provide access to files necessary for evaluating the state's administration of the Class VI program.

B. Immediate Reporting on Noncompliance

The **Insert Name of State Agency** shall immediately notify the Regional Administrator by telephone, or otherwise, of any major, imminent hazard to public health resulting from the endangerment of an underground source of drinking water of the state by well injection.

C. Program Reports

All Class VI program reports shall be consistent with reporting requirements set forth in 40 CFR 146.91 and shall be submitted to the Regional Administrator in accordance with 40 CFR 144.8. The reports are to be submitted quarterly using the specified 7520 reporting forms and include a narrative.

D. Inspection and Surveillance by EPA

The Regional Administrator may select facilities and activities within the state for EPA inspection.

EPA may conduct such inspections jointly with the state. The **Insert Name of State Agency** shall give the Regional Administrator adequate notice to participate in any compliance evaluation inspection scheduled by the state.

The Regional Administrator may also choose to conduct inspections independently of the state's schedule. In such cases, the EPA shall notify the state as least seven (7) days before any inspection that EPA determines to be necessary. However, if an emergency exists, or for some reason it is impossible to give advance notification, the Regional Administrator may waive advance notification to inspect a facility. In keeping with Section 1445(b)(2) of SDWA, the state understands not to inform the person whose property is to be entered of the pending inspection.

E. Annual Performance Evaluation

EPA shall conduct, at least annually, performance evaluations of the state program using program reports and other requested information to determine state program consistency with the program submission, SDWA applicable regulations, and applicable guidance and policies. The review will not only include a review of financial expenditures but reviews on progress towards program implementation, changes in the program description, and efforts towards progress on program elements.

EPA shall submit a summary of the evaluation findings to the state outlining the deficiencies in program performance and recommendations for improving state operations. The report also might provide guidance for the development of an upcoming grant application. The state shall have 15 working days from the date of receipt to concur with or comment on the findings and recommendations.

VI. Signatures

Insert Name of State Agency

By _____

Insert Name of State Signer

Insert Title of State Signer

Date _____

U.S. Environmental Protection Agency, Region Insert Region Number

By _____

Insert Name of Regional Administrator

Regional Administrator

Date _____